

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ERNESTO Y. CASTILLO,

Plaintiff,

v.

**NEWREZ LLC d/b/a SHELLPOINT
MORTGAGE SERVICING AND U.S.
BANK, N.A., as Trustee,**

Defendants.

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Civil Action No.: 5:21-cv-00437

**NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING'S AND
U.S. BANK, N.A., AS TRUSTEE'S REMOVAL NOTICE**

NewRez LLC f/k/a New Penn Financial LLC d/b/a Shellpoint Mortgage Servicing (**Shellpoint**) and U.S. Bank, N.A., as Trustee, Successor In Interest to Wachovia Bank, National Association, as Trustee, Successor by Merger to First Union National Bank as Trustee, for Mid-State Trust VII (**U.S. Bank, N.A., as trustee**) remove the action Ernesto Y. Castillo filed in state court pursuant to 28 USC §§ 1331, 1332 and 1441 for the reasons set forth below.

I. STATEMENT OF THE CASE

1. Mr. Castillo sued Shellpoint and U.S. Bank, N.A., as trustee, on April 16, 2021 in the 225th District Court of Bexar County, Texas in case number 2021-CI-07447 styled *Ernesto Y. Castillo v. NewRez LLC d/b/a Shellpoint Mortgage Servicing and U.S. Bank, N.A., as Trustee*. (Ex. 1, pet., at 1.) He claimed Shellpoint: (1) failed to adequately respond to a qualified written request under 12 U.S.C. § 2605; (2) failed to adequately provide him loss mitigation options; (3) improperly foreclosed on his residence; (4) failed to permit him to reinstate the loan under 12 U.S.C. § 2605 and 24 C.F.R. § 3500.21; and (5) "advise[d]" him U.S. Bank, N.A., as trustee forbade providing him any mortgage assistance. (*Id.*, ¶¶ 8-10.) He requested the court issue

injunctive relief preventing any foreclosure of his property or his eviction from it. (*Id.*, ¶¶ 12-20, Prayer.) He also sought unspecified damages from a defendant's foreclosure and eviction. (*Id.*, Prayer ¶ J.)

II. BASIS FOR FEDERAL QUESTION JURISDICTION

2. Federal question removal is appropriate "when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1441 because Mr. Castillo explicitly asserts violations of 12 U.S.C. §§ 2601, et seq. (**RESPA**) and HUD regulations, 24 C.F.R. §§ 3500.1, et seq., and implicitly¹ asserts violations of 12 C.F.R. §§ 1024.1, et seq. (**Regulation X**). (Ex. 1, pet., ¶¶ 8-10.)

III. BASIS FOR DIVERSITY JURISDICTION

3. The court may exercise diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds \$75,000. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005).

A. The parties are citizens of different states.

4. Mr. Castillo is domiciled in Bexar County, Texas. *Preston v. Tenet Healthsystem Mem'l Med. Ctr.*, 485 F.3d 793, 797-98 (5th Cir. 2007). He resides in Bexar County at the property in question, which he lists as his homestead and acquired in 2003. (Ex. 1, pet., ¶¶ 1 & 7; EX. 5, appraisal recs.) He intends to remain there, as evidenced by this lawsuit to prevent foreclosure of the property and permit him to remain. (Ex. 1, pet., ¶¶ 12-20, Prayer.) He evidenced no intent to leave the property, much less the state. *See Preston*, 485 F.3d at 797-

¹ See 12 C.F.R. § 1024.36(a) (governing qualified written requests).

98 ("A person's state of domicile presumptively continues unless rebutted with sufficient evidence of change."). Mr. Castillo is a Texas citizen.

5. Shellpoint is a limited liability company and a citizen of the states of its members. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Shellpoint is a limited liability company organized under the laws of Delaware with its principal place of business in Pennsylvania. Shellpoint's parent company is Shellpoint Partners LLC. The parent companies of Shellpoint Partners LLC are NRM Acquisition LLC (99%) and NRM Acquisition II LLC (1%). The parent company of both NRM Acquisition LLC and NRM Acquisition II LLC is New Residential Mortgage LLC. The parent company of New Residential Mortgage LLC is New Residential Investment Corp., a Delaware corporation with its principal place of business in New York. Shellpoint is therefore a citizen of Delaware and New York for purposes of diversity jurisdiction

6. A trustee's citizenship controls its trust's citizenship for diversity purposes. *Wells Fargo Bank, N.A. v. Am. Gen. Life Ins. Co.*, 670 F. Supp. 2d 555, 561 (N.D. Tex. 2009) (citing *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461 (1980); *Bass v. Int'l Bhd. of Boilermakers*, 630 F.2d 1058, 1067 n.17 (5th Cir. 1980)). A national bank is a citizen of the state where its main office (defined by its articles of association) is located. 28 U.S.C. § 1348; *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006). U.S. Bank National Association's main office is in Cincinnati, Ohio.² U.S. Bank, N.A., as trustee, is an Ohio citizen.

B. The amount in controversy exceeds \$75,000.

7. Mr. Castillo seeks to enjoin the sale of, and eviction from, property appraised at \$124,990.00. "In actions seeking declaratory or injunctive relief the amount in controversy is

² SEC Form T-1, U.S. Bank National Association (accessible at: <https://www.sec.gov/Archives/edgar/data/60302/000089102002000189/v79459orex25-1.txt>) (last accessed April 15, 2021 at 4:20 p.m.).

measured by the value of the object of the litigation." *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983); *Farkas v. GMAC Mortg., LLC*, 737 F.3d 338, 341 (5th Cir. 2013) (per curiam). Mr. Castillo sued requesting equitable relief preventing Shellpoint and U.S. Bank, N.A., as trustee, from foreclosing on 663 Redfern Dr., San Antonio, Texas 78264. (Ex. 1, pet., ¶¶ 1, 7, & 12-20, Prayer.) Courts may rely on county appraisal district records to determine property value. *Snipes v. SunTrust Morg.*, No. 4:11-cv-00743, 2011 WL 3502800, at *5 (S.D. Tex. 2011). The Bexar County Appraisal District last valued this property at \$124,990.00. (Ex. 7, appraisal recs.)

IV. PROCEDURAL REQUIREMENTS SATISFIED

8. Shellpoint and U.S. Bank, N.A., as trustee, timely remove this action within thirty days of receiving the complaint. 28 U.S.C. § 1446(b). They notified the state court of the removal and attach true and correct copies of all process, pleadings, and orders on file in the state court action as exhibits 1-6.

V. PRAYER

The court may exercise federal question and diversity jurisdiction.

Date: May 3, 2021

Respectfully submitted,

/s/ C. Charles Townsend

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**ATTORNEYS FOR SHELLPOINT
AND U.S. BANK, N.A., AS TRUSTEE**

CERTIFICATE OF SERVICE

I certify I served this document on May 3, 2021 as follows:

Ernesto Y. Castillo

663 RedFern Dr.

San Antonio, TX 78264

VIA CERTIFIED MAIL CM/RRR

NO. 9414 7266 9904 2174 9886 60

Plaintiff pro se

/s/ C. Charles Townsend

C. Charles Townsend